

ITEM 11

PROPOSED STATEMENT OF DECISION DENIED INCORRECT REDUCTION CLAIM

Education Code Section 51225.3
Statutes of 1983, Chapter 498

Graduation Requirements
Fiscal Years 1984-85 through 1995-96
San Diego Unified School District, Claimant

EXECUTIVE SUMMARY

On August 24, 2000, the Commission, by a vote of 5 to 2, denied this incorrect reduction claim filed by San Diego Unified School District (SDUSD). Therefore, the sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects the vote of the Commission.¹

This incorrect reduction claim pertains to the SDUSD reimbursement claims filed under the Graduation Requirements mandate. Generally, this mandate requires students, beginning with the 1986-87 school year, to complete at least two courses in science before receiving a high school diploma, which as a result, requires school districts to hire additional science teachers. The SCO denied SDUSD's cost reimbursement claim because the SDUSD failed to identify any offsetting savings. The issues before the Commission were whether the SCO:

- Lacked the authority to audit and reduce Claimant's cost reimbursement claim;
- Performed an improper audit of Claimant's cost reimbursement claim by reducing the costs claimed for teachers' salaries;
- Established a standard of general application without the benefits of law or due process of rulemaking;
- Incorrectly reduced Claimant's cost reimbursement claim because the reduction was based on factors outside of the Parameters and Guidelines and Claiming Instructions;
- Arbitrarily denied payment of teachers' salaries on Claimant's claim, while approving payment of all teachers' salaries on similar claims filed by other school districts; and
- Has the burden of proof to demonstrate that the Claimant did not experience offsetting savings.

¹ Title 2, California Code of Regulations, section 1188.1, subdivision (g).

Based on the evidence, the Commission concluded that:

- Government Code sections 17561, subdivision (d), and 17564, subdivision (c) authorizes the SCO to audit claims for legality, correctness and to adjust claims if they are excessive or unreasonable.
- Statutory law does not define the scope or manner in which the SCO must conduct and audit. There is no legal basis in which to conclude the SCO did not perform a proper audit.
- The Commission does not have specific or implied authority to determine whether the SCO created a standard of general application without the benefit of law or due process of rulemaking. The Commission is prohibited from deciding the rulemaking issue raised by Claimants.
- The SCO performed the reductions in accordance with the Claiming Instructions, and the Parameters and Guidelines, because the Claimant did not include offsetting savings and claim salary differentials in its claim, or provide documentation to support its claim for teachers' salaries.
- There is no evidence that the SCO arbitrarily denied payment of teachers' salaries to the Claimant.
- The SCO does not have the burden of proof to demonstrate that Claimant is ineligible for reimbursement.

Staff Recommendation

Staff recommends that the Commission approve the Proposed Statement of Decision, which accurately reflects the Commission's decision.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 51225.3, as added by
Statutes of 1983, Chapter 498, and

Filed on October 4, 1993, to include Fiscal
Years 1984-85 through 1989-90;

Amended on February 15, 1995 to include
Fiscal Years 1990-91 through 1992-93;

Amended on October 13, 1998 to include
Fiscal Years 1993-94 through 1994-95;

Amended on September 3, 1999 to include
Fiscal Year 1995-96;

By San Diego Unified School District,
Claimant.

NO. CSM 4435-I-01 and 4435-I-37

Graduation Requirements

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Proposed on September 28, 2000)

PROPOSED STATEMENT OF DECISION

On August 24, 2000 the Commission on State Mandates (Commission) heard this incorrect reduction claim during a regularly scheduled hearing. Mr. James A. Cunningham, Legislative Mandate Specialist, appeared for San Diego Unified School District. Ms. Carol Berg, appeared for Education Mandated Cost Network. Mr. Jeff Yee and Mr. Shawn Silva, appeared for the State Controller's Office. Mr. Pete Cervinka, appeared for the Department of Finance.²

At the hearing, oral and documentary evidence was introduced, the incorrect reduction claim was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the State Controller has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state mandated activities and whether the State Controller has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

² In addition to the August 28, 2000 hearing, this Incorrect Reduction Claim has come before the Commission a total of eight times between January 25, 1996 and September 26, 1996. The Commission did not previously decide this case in hopes that the parties could settle this claim without further proceedings.

The Commission, by a vote of 5 to 2, denied this incorrect reduction claim.

Background:

(1) Test Claim Proceedings

On January 22, 1987, the Commission adopted its decision that the *Graduation Requirements* test claim constitutes a reimbursable state mandated program by requiring students, beginning with the 1986-87 school year, to complete at least two courses in science before receiving a high school diploma.³ Under prior law, the Education Code only required the completion of one science course.

The staff analysis of the test claim noted the concerns of the State Department of Education (SDE)⁴ regarding reimbursement of teachers' salaries. It was the SDE's position that, "[t]he extent to which elective courses take funds away from the core curriculum, the courses may be discontinued and funds redirected to the core curriculum." In response to SDE's opposition, the staff analysis stated that SDE's concerns would be given primary consideration in the development of the Parameters and Guidelines.

The Commission's Parameters and Guidelines were adopted on March 23, 1988.⁵ Under Section V. of the Parameters and Guidelines entitled, "Reimbursable Costs," the following activities are described as eligible for reimbursement:

- A. Acquisition of additional space and equipment necessary for conducting new science classes, providing that space is lacking in existing facilities.
- B. Remodeling existing space to accommodate the new science class and lab including costs of design, renovation, and special lab equipment and outlets essential to maintaining a level of instruction sufficient to meet college admission requirements.
- C. *Increased cost to school district for staffing and supplying the new science classes mandated.* (Emphasis added.)

Under Section VI. of the Parameters and Guidelines entitled, "Offsetting Savings and Other Reimbursement," the following costs are described as offsetting savings:

"Any savings the Claimant experiences as a direct result of this statute must be deducted from the cost claimed, e.g., *reductions in non-science classes resulting from increase in required science classes . . . shall be identified and deducted from this claim.*" (Emphasis added.)

Following the adoption of the Parameters and Guidelines, Commission staff, based upon information received from school districts, prepared a Statewide Cost Estimate, which was

³ Education Code section 51225.3 (Stats. 1983, ch. 498).

⁴ The State Department of Education is administered through (1) the State Board of Education, which is the governing and policy determining body of the Department and (2) the Director of Education who is responsible for all executive and administrative functions of the Department and is the executive officer of the State Board of Education. See Education Code sections 33301, 33303. The State Superintendent of Public Instruction oversees the schools of this state and executes, under the direction of the State Board of Education, the policies that have been decided upon by the Board. The Superintendent is also ex-officio the director and executive director of the State Department of Education. See Education Code sections 33301-33303, 33111, 33112.

⁵ The Parameters and Guidelines were amended on August 24, 1988 and January 24, 1991. The August 24, 1988 was a technical amendment with no bearing on this claim. The January 24, 1991 amendment required documentation to demonstrate actual need for capital improvements, and did not relate to teachers' salaries.

presented to the Commission in August 1988. The amount of this proposed Statewide Cost Estimate was approximately \$151 million dollars. However, Commission staff cautioned that the cost estimate might be inaccurate based on (1) the school districts' failure to offset the additional science classes with corresponding staffing reductions in *non-science* classes, and (2) failure to account for increased enrollment. The Commission did not adopt the \$151 million Statewide Cost Estimate and directed staff to resurvey the school districts to attempt to develop a more accurate estimate.

At the May 25, 1989 hearing, a *revised* Statewide Cost Estimate of approximately \$159 million was presented to the Commission. Again, staff reported that responding school districts failed to offset savings for reductions of non-science staff. In response to the staff's revised estimate, the Department of Finance (Department), in its submission of April 18, 1989, proposed a Statewide Cost Estimate in the amount of \$16.8 million. In the preparation of this estimate, the Department set forth the following assumptions:

"It may be assumed, except where demonstrated otherwise, that *any cost* of hiring science teachers and acquiring space for second science courses is *fully offset* by reductions of non-science teaching staff and by space made available for courses dropped by districts as not needed for addressing the changes in curriculum required by the mandate.

"This assumption reflects the fact that Education Code section 44955 was amended by Chapter 498/83 (the *same* chapter requiring the second science course) to provide that whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall become necessary by reason of [this condition] to decrease the number of permanent employees in the district, the . . . governing board *may terminate* the services of not more than a corresponding percentage of the certificated employees of the district. . . .

"*Payable* claims associated with this mandate are expected to be selected cases in which districts are *successfully able to demonstrate special circumstances* which *prove* that the *expected offsets were absent or not sufficient* to cover their costs.

"*Only* costs associated with the hiring of new teachers which could not be offset would be claimable.

"*Only very small high schools* might have to hire additional staff to be able to offer newly required courses. *Larger schools*, because of the provisions described above [Education Code section 44955] allowing layoffs to reorganize to meet changes in curriculum, would experience *no net increases* in staff costs and might even have *decreases* where new teachers start at a *lower* salary than existing teachers.

"*The burden of proof is upon local educational agencies* to demonstrate that any additional costs have resulted from the graduation requirements mandate . . ."
(Emphasis added.)

The Commission did not adopt a Statewide Cost Estimate at the May 25, 1989 hearing; instead, the Commission directed staff, the Department, and the school districts to convene a pre-hearing conference to jointly arrive at a cost estimate. The pre-hearing conference was held on June 22, 1989. At this pre-hearing the parties agreed to a Statewide Cost Estimate based upon the

Department's assumptions. On July 27, 1989, the Commission adopted, by consent, a Statewide Cost Estimate developed by the parties equaling \$16.8 million (\$2.8 million per year) for fiscal years 1984-85 through 1989-90 for all school districts.

(2) Initial Reimbursement Claims

In January 1991, the SCO issued Claiming Instructions for this mandate. Section V. of the Claiming Instructions, entitled, "Reimbursable Components," mirrored the Commission's Parameters and Guidelines Section V., entitled, "Reimbursable Costs." Section VI. of the Claiming Instructions, entitled, "Reimbursement Limitations," mirrored the Commission's Section VI. of the Claiming Instructions, entitled, "Offsetting Savings and Other Reimbursement." In addition, Section VII. of the Claiming Instructions, entitled "Claim Form and Instructions," explained that expenses must be supported by cost and time records submitted with the claim.

On May 13, 1993, SDUSD submitted its claims for costs incurred in fiscal years 1984-85 through 1989-90.⁶ The claims did not identify any offsetting savings, nor was it explained why there were no offsetting savings.

On July 27, 1993, a policy letter was issued by the SCO, regarding anticipated adjustments to the reimbursement claims for teacher salaries filed under the *Graduation Requirements* test claim. The SCO explained it reviewed the Commission's Parameters and Guidelines and that it anticipated that it would be making adjustment based on the SDE's comments in response to the *Graduation Requirements* test claim, as well as the Department's interpretation of Education Code section 44995, subdivision (b). In essence, the SCO, relying on the Commission's Parameters and Guidelines, which are consistent with the SDE's and Department's comments, concluded that monies redirected from the reduction of non-science classes would be sufficient to fund the newly required science classes.

On August 20, 1993, the SCO sent Claimant a letter denying reimbursement for all teacher salaries, which stated:⁷

"The amounts claimed for teacher salaries have been adjusted. Reimbursement of staffing cost is limited to salary and other remuneration differentials, if any, of science teacher and the cost of laboratory assistants or special teaching aides required by the science class. The addition of science classes should have resulted in offsetting savings due to a corresponding reduction of non-science classes. Your claims do not indicate a corresponding reduction."

(3) Incorrect Reduction Claim

As a result of the SCO's reductions, on October 4, 1993, Claimant filed an Incorrect Reduction Claim (IRC) with the Commission on State Mandates.⁸ The Department, SDE and SCO filed

⁶ Claimant filed initial reimbursement claims for fiscal year 1984-5 through 1989-90 on November 26, 1991. The January 24, 1991 amendment the Parameters and Guidelines requires documentation to demonstrate actual need for capital improvements. Claimant was given until May 13, 1993, to amend claims.

⁷ Claimant has since filed claims for fiscal years 1990-91 through 1995-96. Each time the SCO has reduced the claims for the same reason--teachers' salaries.

⁸ SDUSD amended its claim three times beginning in 1995. In 1995, SDUSD amended its claim to include fiscal years 1990-91 through 1992-93. In 1998, SDUSD amended its claim to include fiscal years 1993-94 through 1994-95. In 1999, SDUSD amended its claim to include fiscal year 1995-96.

responses to the IRC on December 20, 1993, January 21, 1994 and February 18, 1994, respectively. On December 18, 1995, the IRC draft staff analysis was issued. SDUSD responded to the draft staff analysis on January 3, 1996, and the SCO responded on January 10, 1996. Between January 25, 1996 and September 26, 1996, this IRC came before the Commission eight times without reaching resolution. During this same time period, three meetings were held, along with numerous communications, in an attempt to reach agreement on the issue. A summary of the significant hearings and meetings and their outcomes are discussed below.

At the February 6, 1996 hearing,⁹ Claimant requested that the Commission's Chairperson, the representative for the Director of the Department of Finance, be recused from the hearing and further requested that this matter be transferred to an administrative law judge. Both requests were denied. However, the Commission gave Claimant additional time to submit questions regarding the SCO's procedures.

At the February 29, 1996 hearing, the SDUSD requested that the SCO be required to respond to specified questions regarding SCO's reduction of claims. For lack of a motion on the part of the Members, SDUSD's request was rejected. However, the SCO agreed to work with Claimant in order to determine the nature of documentation school districts are required to provide.

At the March 28, 1996 hearing, the SCO submitted a draft document entitled "Guidelines for Determining Offsetting Cost Savings." On April 18, 1996, the parties met and discussed the SCO's proposed guidelines. However, at the May 6, 1996, hearing, the SCO and Claimants reported to the Commission that no accord had been reached.

At the May 30, 1996 hearing, Claimants complained that no pre-hearing conference had been scheduled with the SCO and the Commission's former Executive Director, to develop a worksheet or formula for reimbursement. In response to this complaint, a pre-hearing conference was scheduled and held on June 17, 1996. The conference was attended by the Commission's former Executive Director, the former Chief Deputy State Controller; key SCO personnel; and, representatives from SDUSD, San Jose Unified School District, and Education Mandated Cost Network (EMCN). At this conference, the school district representatives, expressed their concerns that it might be difficult to obtain source documents extending back to 1983-84; the fiscal year immediately preceding the initial year of reimbursement.

Subsequent to this meeting, the SCO, on June 26, 1996, issued a clarification letter for Claimants, along with a worksheet for claiming reimbursement under the *Graduation Requirements* mandate. In this letter the SCO explained:

" You may wish to use this worksheet as a tool to calculate your reimbursable science teacher costs. Use of this worksheet is at your discretion and is not required by the Controller's Office.[¶] Remember, when submitting any claim information to our office, include documentation you feel supports your claim. . . . "

At the June 27, 1996, hearing, EMCN and SDUSD, expressed their concerns that the SCO's requirement to submit original source documents to support their reimbursement claims may be

⁹ On January 25, 1996, the Commission was originally scheduled to hear the IRC filed by Claimant regarding Graduation Requirements. However, due to various procedural objections raised by Claimant, this hearing was continued to February.

overly burdensome. EMCN pointed out that ordinarily, school districts place documents over three years old in storage, a problem exacerbated by the fact that in many cases the people who compiled the original claims are no longer employed with the district when the claims need to be filed. SDUSD stated, “there should be a fairly clear understanding that these claims were filed four years ago and five years ago.” SDUSD added that since the Claimants filed according to the Claiming Instructions, as originally drafted, they would not have anticipated that the documentation, as subsequently requested, would be required to support their reimbursement claims. In response to SDUSD, the State Controller’s representative commented that, due to number of years that this issue of documentation had been before the Commission, a school district should certainly have retained the necessary documentation for reimbursement.

The parties continued their attempts to develop a worksheet through an exchange of correspondence. On July 24, 1996, a pre-hearing conference was conducted. The discussion focused on the selection and development of a single worksheet from the several different worksheets submitted by the SCO, EMCN, and Mandated Cost Systems (MCS). At the September 26, 1996, hearing, the former Executive Director reported that at the July 24, 1996 pre-hearing conference, the parties were unable to reach a compromise and collectively endorse a single worksheet. However, the parties did agree to further analyze three formulas: one from the SCO, and two originating from EMCN. The former Executive Director added that EMCN’s formula five was the only formula which could succeed. Nevertheless, the former Executive Director stated that the SCO would need to identify acceptable data for use in the worksheet, and recommended that the parties use the California Basic Educational Data system (CBEDS). The SCO rejected the use of CBEDS, because it did not provide for a showing of offsetting savings. It was then suggested that the SCO conduct a study, similar to the one done for *Open Meetings Act* mandate, to determine acceptable data to support the reimbursement claim. The SCO also rejected this suggestion, because it too would not accurately show offsetting savings. Finally, the SCO rejected the proposal to use original input records on enrollment, used to create CBEDS, because such records were not intended to show actual costs. Accordingly, the Commission decided SDUSD’s IRC should be set for hearing, since the parties were unable to reach agreement on the use of any one formula.

Claimant’s Position

The Claimant asserted that the reimbursement claims¹⁰ were incorrectly reduced because:

- The SCO lacks the authority to audit and reduce Claimant’s cost reimbursement claim. Claimant asserted that neither the test claim legislation, Government Code section 17561, nor Commission Regulations provide the SCO with the authority to audit and adjust Claimant’s cost reimbursement claims.
- The SCO performed an improper audit of Claimant’s cost reimbursement claim by reducing the costs claimed for teachers’ salaries. The Claimant asserted that the SCO did not comply with the audit procedure set forth by Government Code section 17561, subsection (d), when it lined through the cost of teacher salaries claimed without requesting additional information from Claimant.
- The SCO established a standard of general application without the benefits of law or due process of rulemaking.

¹⁰ SDUSD filed an IRC for fiscal years 1984-85 through 1989-90, and three amendments to include fiscal years 1990-91 through 1992-93, 1993-94 through 1994-95, and 1995-96, respectively.

- The SCO incorrectly reduced Claimant's cost reimbursement claim because the reduction was based on factors outside of the Parameters and Guidelines and Claiming Instructions.
- The SCO arbitrarily denied payment of teachers' salaries on Claimant's claim, while approving payment of all teachers' salaries on similar claims filed by other school districts.¹¹
- The SCO has the burden of proof to demonstrate that the Claimant did not experience offsetting savings. Claimant asserted that the SCO has the burden to prove Claimant experienced offsetting savings from a reduction in non-science classes.

Department of Finance's Position

The Department agreed with the SCO's policy letter dated July 27, 1993, as outlined in its letter dated December 20, 1993:

"[T]he Parameters and Guidelines and Claiming Instructions clearly state that any offsetting savings must be deducted from the amounts claimed. It appears reasonable to us that Claimant must document the "increased costs" resulting from the mandate and that such documentation of the marginal cost increases resulting from such a mandate would logically exclude such savings.

"[The test claim legislation] does not require that school districts offer the new science class in addition to all previously offered classes and, therefore, the choice of any school district to continue to offer un-mandated classes should not be funded through the mandate process. It has long been our position that it is entirely appropriate for the Legislature to specify that expenditures being incurred by a school district on an optional program be redirected to one which the Legislature deems to be of higher priority without incurring an obligation [under mandates law]. [The Legislature through the test claim legislation] has deemed the second science class to be of higher priority than other courses which are not mandated as a prerequisite to graduation from high school."

State Department of Education's Position

SDE's comments, dated January 21, 1994, are in response to Claimant's IRC. SDE maintained that Claimant's claim was not incorrectly reduced and supports the SCO position by stating:

"[I]t is our position that Claimant should have had savings to offset any costs related to additional required instruction in science by reducing other non-mandated classes. Claimant should have adjusted its teaching staff in such a way as to result in no net cost to the district for teaching staff."

State Controller's Office Position

It was the SCO's position, based on its July 27, 1993 policy letter, that it adjusted Claimant's reimbursement claim based on the Commission's Parameters and Guidelines. Furthermore, based on the August 20, 1993 remittance letter, the SCO reduced Claimant's reimbursement claim for teacher salaries, because:

¹¹This issue addressed solely in Claimant's letter of December 19, 1997.

“Reimbursement of staffing cost is limited to salary and other remuneration differentials, if any, of science teacher and the cost of laboratory assistants or special teaching aides required by the science class. The addition of science classes should have resulted in offsetting savings due to a corresponding reduction of non-science classes. Your claims do not indicate a corresponding reduction.”

However, on February 18, 1994, in response to Claimant’s filing of the IRC, the SCO urged that the Commission reconsider the original test claim, since: (1) the Statement of Decision does not address the issue of offsetting teachers’ salaries; and (2) the Parameters and Guidelines do not clearly specify reimbursement costs or adequately address the offset issue.

Finally, on January 10, 1996, in response to the December 18, 1995 draft Commission analysis of the IRC, the SCO responded to Claimant’s allegations by stating:

“[E]ach [claim] was individually reviewed for reimbursable costs pursuant to the Commission on State Mandates’ adopted Parameters and Guidelines. The Parameters and Guidelines clearly required Claimants to identify any ‘Offsetting Savings and Other Reimbursement’ associated with the mandate.”

Thus, the SCO explained, if a school district claimed reimbursement for teachers’ salaries and did not identify any offsetting savings from laying-off teachers of non-mandated subjects, or provide documentation supporting the reason why there were no offsetting savings, the claim was reduced by the entire amount claimed for teachers’ salaries.

Commission Findings

Based on Claimant's allegations, there were six issues for consideration by the Commission:¹²

- Issue 1: Does the SCO have the authority to audit and reduce Claimant's cost reimbursement claim?
- Issue 2: Did the SCO perform a proper audit of Claimant's cost reimbursement claim?
- Issue 3: Did the SCO establish a standard of general application without the benefits of law or the due process of rulemaking?
- Issue 4: Did the SCO reduce Claimant's reimbursement claim based on Commission's Parameters and Guidelines, and the Claiming Instructions?
- Issue 5: Did the SCO arbitrarily deny payment of all teachers' salaries on Claimant's claim, while approving payment of all teachers' salaries on similar claims filed by other school districts?
- Issue 6: Does the SCO have the burden of proof to demonstrate that Claimant is eligible for reimbursement?

These issues are addressed below.

Issue 1: Does the SCO have the authority to audit and reduce Claimant's cost reimbursement claims?

Claimant asserted that the SCO lacked the authority to eliminate, audit, and reduce Claimant's cost reimbursement claims. Claimant maintained that neither Chapter 498, Statutes of 1983, Government Code section 17561, nor the Commission's regulations grant SCO this authority.

The Commission found that the SCO's authority to audit and make adjustments rests in the California Constitution and California Government Code. Article XVI, section 7, grants the SCO implicit constitutional authority to audit all disbursements from the State Treasury to ensure the Controller's concurrence in the expenditure of state funds. Government Code section 12410 provides, in relevant part, that:

“[t]he Controller shall superintend the fiscal concerns of the state. The Controller . . . may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.”

In addition, Government Code section 17561, subdivision (d), and Government Code section 17564, subdivision (c), delegates authority to the SCO to audit and reduce any mandated reimbursement claim, “which the Controller determines is excessive or unreasonable.” Thus, in view of the aforementioned constitutional and statutory provisions, the Commission found that the SCO has clear authority to audit and make adjustments to reimbursement claims.

Issue 2: Did the SCO perform a proper audit of Claimant's cost reimbursement claims?

Claimant asserted that the SCO performed an improper audit of its cost reimbursement claims by reducing the costs claimed for teachers' salaries in violation of Government Code section 17561. Claimant stated that “the SCO merely lined through the teachers' salary costs claimed by Claimant and decreased Claimant's claim by the sum of the teachers' salary cost plus the indirect

¹² The Claimant submitted two sets of comments. The comments were combined to eliminate repetitive assertions.

costs associated with teachers' salary costs" without requesting additional information from Claimant, or reviewing any other documentation before making such reductions.

The Commission found that Government Code section 17561 establishes procedures for the SCO to reimburse local agencies and school districts for costs mandated by the state. Section 17561 authorizes the SCO to (1) *audit* the records of any local agency or school district to verify the actual amount of the mandated costs, and (2) to *reduce* any claim that the SCO determines is excessive or unreasonable. There is nothing in this section that defines the scope of the SCO's audit, or the manner in which the audit may be conducted. Nor, is there anything in section 17561 that requires the SCO to request additional information from the Claimant or to review other additional documentation.

The Commission noted that the SCO ultimately reviewed all documentation submitted and made available by Claimant. The Commission found that if Claimant deemed additional documentation critical to the outcome of the SCO's audit, it had an opportunity to submit such documentation in response to the SCO's letter of June 26, 1996. However, as discussed during the June 27, 1996 hearing, Claimant's representatives admitted they did not retain the necessary documentation to support their claim.¹³ Accordingly, the Commission found that there is no legal or factual basis for Claimant's assertion that the SCO did not perform a proper audit of Claimant's cost reimbursement claim.

Issue 3: Did the SCO establish a standard of general application without the benefit of law or the due process of rulemaking?

Claimant contended that the salary differential standard used by the SCO in determining the submitted cost of teachers' salaries were not reimbursable, is arbitrary, fundamentally flawed and established without the benefits of law or due process of rulemaking. Specifically, Claimant stated:

“[I]t was the determination of the State Controller that reimbursement for the increased staffing [costs] would be limited ‘to salary and other remuneration differentials, if any.’ Without stating how the ‘differentials’ were calculated. [¶] The Controller’s new cost accounting rule does not appear in Chapter 498/83, Education Code section 51225.3, the Government Code, the California Code of Regulations, the Parameters and Guidelines, or the Claiming Instructions. By applying the rule to the claims, the Controller is creating a standard of general application without the benefit of law or due process of rulemaking.”

Government Code section 17500, et seq. authorizes the Commission to hear and decide Test Claims and IRCs, adopt Parameters and Guidelines and Statewide Cost Estimates, and review Claiming Instructions, relating to Article XIII B, section 6 of the Constitution. The Commission is also authorized to hear county applications for a Finding of Significant Financial Distress. However, the Commission does not have specific or implied authority to determine whether a procedure constitutes a correctly adopted regulation. Rather, the Legislature has given the Office of Administrative Law the specific authority to hear and decide issues relating to whether a standard of general application is required to be adopted and approved under the Administrative Procedures Act.

¹³ Claimant filed initial reimbursement claims for fiscal year 1984-5 through 1989-90 on November 26, 1991. The January 24, 1991 amendment to the Parameters and Guidelines required documentation to demonstrate actual need for capital improvements. Claimant was given until May 13, 1993, to amend its claims.

Under the current constitutional and statutory scheme, the Commission found that it does not have specific or implied authority to determine whether the SCO created a standard of general application without benefit of law or due process of rulemaking. Accordingly, the Commission found that it is prohibited from determining whether the SCO established a standard of general application without the benefit of law and the due process of rulemaking.¹⁴

Issue 4: Did the SCO reduce Claimant’s reimbursement claim based on the Commission’s Parameters and Guidelines, and the Claiming Instructions?

The Claimant asserted that the SCO ignored its own Claiming Instructions, and the Commission’s Parameters and Guidelines, by requiring Claimant to indicate offsetting savings or submit additional documentation to prove that Claimant had no offsetting savings attributable to the reduction of non-science classes.

Section V. of the Parameters and Guidelines, entitled “Reimbursable Costs,” provides that the following activities are eligible for reimbursement:

- A. Acquisition of additional space and equipment necessary for conducting new science classes, providing that space is lacking in existing facilities.
- B. Remodeling existing space to accommodate the new science class and lab including costs of design, renovation, and special lab equipment and outlets essential to maintaining a level of instruction sufficient to meet college admission requirements.
- C. *Increased cost to school district for staffing* and supplying the new science classes mandated. [Emphasis added.]

Section VI. of the Parameters and Guidelines, entitled “Offsetting Savings and Other Reimbursement,” identifies offsetting savings that apply against reimbursement for the cost of hiring new science teachers:

“Any savings the Claimant experiences as a direct result of this statute must be deducted from the cost claimed, e.g., *reductions in non-science classes resulting from increase in required science classes . . . shall be identified and deducted from this claim.*” [Emphasis added.]

In other words, the Parameters and Guidelines require reimbursement for the “increased cost . . . to staff and supply the new science classes,” minus the cost savings associated with “any savings . . . experience[d by] . . . reductions in non-science classes resulting from the increase in required science classes. . . .” The SCO’s Claiming instructions mirrored the Commission’s Parameters and Guidelines. Thus, the Commission found, that based on the language contained in the Parameters and Guidelines, the Claimant is only entitled to reimbursement for the differential between the increased cost of hiring new science teachers and the savings from laying-off teachers of non-mandated subjects.

In the present case, the SCO audited Claimant’s claim. Based on the Parameters and Guidelines and Claiming Instructions, the SCO anticipated that the cost of hiring new science teachers would be offset, or in the alternative, that Claimant would provide supporting documentation to the contrary. When the Claimant did not record any offsetting savings or provide supporting

¹⁴Commission noted that the Parameters and Guidelines require reimbursement for “increased cost . . . to staff . . . new science classes,” minus “any savings experienced by reductions in non-science classes resulting from an increase in required science classes. . . .” Commission found the salary differential is consistent with the Parameters and Guidelines.

documentation for the cost of teachers' salaries, the SCO determined Claimant's claims to be unreasonable and excessive. Therefore, the Commission found that the reductions performed by the SCO were in accordance with both the Claiming Instructions, and the Parameters and Guidelines.

Moreover, Claimant asserted that the SCO incorrectly reduced claims based on the SDE's and the Department's assumptions that the cost of hiring new science teachers will be offset by the elimination of non-science teachers. In support of this assertion, Claimant relies on the SCO's policy letter of July 27, 1993, which indicated that it relied on the assumptions set forth by the SDE and the Department. Claimant maintained that the SCO cannot rely upon these assumptions for reducing claims, because the SDE and the Department did not provide support for these assumptions when they were introduced to the Commission.

The Commission disagreed. While the SCO, in its policy letter dated July 27, 1993, indicated that it considered the assumptions set forth by the SDE and the Department, it *also* indicated that it relied upon the Commission's Parameters and Guidelines. However, assuming *arguendo* that the SCO's reductions were based *solely* on the SCO's reliance on these assumptions, the Commission found that the reductions were, in essence, consistent with the Commission's Parameters and Guidelines.

Finally, the Claimant asserted, based on the SCO's policy letter, that the SCO incorrectly reduced claims based on Education Code section 44955, subsection (b), by assuming that, for each science teacher hired, another teaching position would be eliminated.

Education Code section 44955, subdivision (b), provides in pertinent part:

“[W]henver the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary . . . to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district . . . at the close of the school year.”

Claimant asserted that Education Code section 44995, subdivision (b), does not empower school boards to terminate teachers in order to fund state-mandated science classes. Rather, Claimant maintained that Education Code section 44995, subdivision (b), imposes no duty to terminate teachers, but merely grants the school board the discretion to do so. Therefore, Claimant asserted that the SCO's conclusion regarding a one-for-one offset between new science teachers and terminated teachers is incorrect.

In support of its position, Claimant cited section 6, article XIII B to support its argument that it had no duty to layoff teachers of non-mandated subject. Specifically, Claimant stated:

“There is no duty under California Constitution section 6, article XIII B, to eliminate optional programs to pay for a state-mandated program. In fact, the California voters included the Constitution reimbursement requirements in article XIII B precisely because of the possibility that local agencies and school districts may otherwise be forced to eliminate optional programs to pay for a state-mandated program. Chapter 498/83 cannot be construed to override the fundamental intent of article XIII B.”

The SCO asserted that Education Code section 44955, subdivision (b), is relevant to the issue of state mandate reimbursement by authorizing local governing school boards to lay off teachers when the Legislature changes the curriculum. In the present case, the SCO noted that the test claim legislation modified the curriculum by requiring students to take a second year of science instead of opting for an elective class. SCO concluded that this requirement would reduce the number of elective classes offered, creating a surplus of non-science teachers. The SCO maintained that under Education Code section 44955, subdivision (b), the school district could release the surplus teachers to offset the cost of hiring new science teachers. Thus, it is the SCO's position that if a school district chooses not to trigger the provisions of section 44955, subdivision (b), it does so at its own option, and it should not be eligible for reimbursement for the cost of hiring additional science teachers. Accordingly, the SCO concluded that Education Code section 44955, subdivision (b) is relevant to the issue of state mandate reimbursement.

The Department, concurring with the SCO's position, asserted that section 6, article XIII B of the California Constitution does not obligate the state to provide reimbursement for an optional program. Specifically, the Department stated:

“It has long been our position that it is entirely appropriate for the Legislature to specify that expenditures being incurred by a school district on an optional program be redirected to one which the Legislature deems to be of higher priority without incurring an obligation under section 6, article XIII B of the California Constitution. A statute such as Chapter 498/83 is a means for the Legislature to express its priorities and, in that statute, the Legislature has deemed a second science class to be of higher priority than other courses which are not mandated as a prerequisite to graduation from high school.”

The Commission concurred with the interpretation of Education Code section 44955, subdivision (b) as set forth by the Department and SDE.¹⁵ In the test claim analysis adopted by the Commission staff, noted SDE's position that “[t]he extent to which elective courses take funds away from the core curriculum, the courses may be discontinued and funds redirected to the core curriculum.” In response to SDE's opposition, the test claim analysis adopted by the Commission stated that SDE's concerns would be given primary consideration in the development of the Parameters and Guidelines. The Commission incorporated the SDE's concerns by including the following language in Section VI. of the Parameters and Guidelines:

“Any savings the Claimant experiences as a direct result of this statute must be deducted from the cost claimed, e.g., *reductions in non-science classes resulting from increase in required science classes . . . shall be identified and deducted from this claim.*” [Emphasis added.]

Furthermore, at the August 24, 2000 hearing, the Commission's schools representative supported the above positions by stating:

“At the typical high school in San Diego, there are only so many hours in a [school] day, and the only two reasons I can think of why you wouldn't lay anybody off . . . would be if your student population [increased] or . . . somehow you changed the teacher-student ratio . . . that you could end up with a need for

¹⁵ Claimant stated in its supplemental comments, that the genesis of the “no science teachers costs” was the May 5, 1986 memorandum from the SDE.

additional staff. But it wouldn't be directly related to this mandate; it would be a different issue."¹⁶

"The way we look at it is: student-teacher ratio. We . . . calculate the staffing as lean as we can, and we add sections [if we need to]. . . . [N]ew requirements mean you would need fewer sections of [non-mandated subjects]."¹⁷

"Unless your student population is growing or the student-teacher ratio, in contractual or budgetary terms, changes, you still need the same number of teachers that you did the previous year; you're just rearranging [teachers]."¹⁸

The Commission's schools representative then asked the SDUSD representative, given the typical school budget process as outline above, whether he could explain why SDUSD incurred additional staffing costs as a result of the additional science class requirement. The SDUSD representative responded that he could not answer that question because he was not involved in the budget process back in 1983 when the test claim legislation was implemented.¹⁹

Based on the foregoing, the Commission found that the SCO's reliance on the SDE's and the Department's interpretation of Education Code section 44955, subdivision (b), is consistent with the Parameters and Guidelines. Moreover, the Commission found that it affirmed its endorsement of the SDE's and Department's interpretation of Education Code section 44955, subdivision (b), when it considered the Department's assumptions at the time it approved the Statewide Cost Estimate. Accordingly, the Commission found that the SCO's reliance on Education Code section 44955, subdivision (b), is not misplaced.

The Commission further agreed with the Department's position that the purpose of section 6, article XIII B is not to provide reimbursement for optional programs, but to prevent the state from mandating additional activities upon local agencies without providing subvention of funds. Government Code section 17514 provides that school districts are only entitled to reimbursement, if they are *required* to incur increased costs. In the present claim, the Commission found that the state only requires school districts to provide additional science classes. For this requirement, the state provided funds by prioritizing science classes over elective classes. In comparison, the state does not require school districts to maintain the status quo by continuing to offer elective classes. School districts may continue to offer elective classes, but must do so at their own expense. Accordingly, the Commission found that prioritizing funds for science classes over non-mandated elective classes does not invoke the protections of section 6, article XIII B.

Based on the foregoing, the Commission found that the SCO did not incorrectly reduce claims based on the SDE's and the Department's assumptions that the cost of hiring new science teachers would be offset by the elimination of non-science teachers; but instead, the Commission found that the SCO relied on the Commission's Parameters and Guidelines.

¹⁶ See transcript for the August 24, 2000, Hearing, page 129, lines 9 through 17.

¹⁷ See transcript for the August 24, 2000, Hearing, page 130, lines 16 through 21.

¹⁸ See transcript for the August 24, 2000, Hearing, page 130, lines 24 through 25; page 131, lines 1 through 3.

¹⁹ See transcript for the August 24, 2000, Hearing, page 131, lines 15 through 23.

Issue 5: Did the SCO arbitrarily deny payment of all teachers' salaries on Claimant's claim, while approving payment of all teachers' salaries on similar claims filed by other school districts?

In response to the SCO's rejection of Claimant's formula, Claimant cited to the SCO's approval of thirty-eight other school districts with "similar" claims not supported by documentation. Claimant asserted that the SCO approved these claims based solely on formulas submitted with the claim. Claimant continued that some claims were even approved without the benefit of formulas. Thus, Claimant asserted the audit and subsequent claim reductions resulted in the arbitrary denial of their claims.

The Commission found that unlike Claimant's claim, the claims cited by Claimant were ultimately approved by the SCO, because they identified a salary "differential" for the cost of hiring new science teachers. For example, Claimant cited to Gridley Union High School District and John Swett Unified School District to evidence the SCO's arbitrariness. For these claims, Claimant maintained that the SCO approved payment based on a formula set forth in the claim which is the same formula used by Claimant or produces the same result as the formula used by Claimant.

The Commission found that both Gridley and Swett high schools followed the SCO's instructions and claimed only the salary differential for the increased cost of science teachers' salaries.^{20,21} Claimant, on the other hand, claimed the entire cost of additional science teachers, totaling nearly \$1.2 million, without identifying a salary differential. Therefore, when the SCO reviewed each of the respective claims, the Gridley and Swett high school claims were approved and Claimant's were rejected.

In addition, Claimant cited to the claims of Chaffey Union High School District,²² Alameda Unified School District, and Albany Unified School District to support its contentions. For these claims, Claimant maintained that payment was approved without the use of any formula. However, the Commission found that in accordance with the Parameters and Guidelines, and Claiming Instructions the claims made by the Alameda Unified School District and Albany Unified School District claimed only the salary differential for the increased cost of science teachers' salaries.^{23, 24} Again, the Commission noted that Claimant claimed the full amount of additional teachers' salaries instead of a salary differential.

Based on the foregoing, the Commission found that the claims approved by the SCO, as cited by Claimant, identified a salary differential for the increased cost of science teachers' salaries based

²⁰ For fiscal year 1992-93, Gridley Union High School District recorded a salary differential of \$1,867 x 1.30, for a total claim of \$2,427.

²¹ For fiscal year 1992-93, John Swett Unified School District recorded a salary differential of \$4,365 x 1.00, for a total of \$4,365.

²² In regards to Chaffey Joint Unified High School District, Commission found that the high school did not identify a salary differential for the increased cost of science teachers' salaries. Chaffey High School merely claimed the full amount of a teacher's salary. Commission found that the SCO may have overlooked this error because the full amount claimed was for a teacher, teaching a single class period, which only amounted to \$9,362.

²³ For fiscal year 1992-93, Alameda Unified School District recorded a salary differential of \$1,406 x 2.99, for a total of \$4,204.

²⁴ For fiscal year 1992-93, Albany Unified School District recorded a salary differential of \$8,618 x .47, for a total of \$4,050.

on the Parameters and Guidelines, and Claiming Instructions. In contrast, Claimant's claims did not identify a salary differential. Accordingly, the Commission found no support for Claimant's contentions that the SCO arbitrarily denied payment of their teachers' salaries.

Issue 6: Does the SCO have the burden of proof to demonstrate that Claimant is ineligible for reimbursement?

It was Claimant's position that the SCO has the burden of proof to demonstrate that Claimant benefited from offsetting savings. Claimant maintained that it fully complied with the SCO's Claiming Instructions and supplied all the documentation requested by the SCO's Claiming Instructions.

The SCO maintained that its authority to request additional documentation, not specified within its Claiming Instructions, is derived from the same authority which allows it to audit claims under the California Constitution and Government Code sections 17561, subdivision (d), and 17564, subdivision (c).

In addressing this situation, the Commission looked to an analogous situation where a taxpayer has made a claim against the state. The court in *Honeywell v. State Board of Equalization* (1982) 128 Cal.App.3d 739, in holding:

“[t]he taxpayer has the burden of proof to show that he is entitled to his claim. He cannot assert error and thus shift to the state the burden . . . ,”²⁵

remarked that it is a matter of *common sense* to impose the burden of proof upon the audited party. The *Honeywell* court commented it is this party that creates the transaction which is the subject of the inquiry. It is this party who can conceal or destroy documentation that would establish the nature of the transaction. Thus, the court held, as a matter of policy, the party having the power to create, maintain, and provide the evidence should carry the burden of proof.²⁶

Based on the foregoing, the Commission found that the Claimant has the burden of proof. In the present case, the SCO audited the claims, and reduced them for not identifying offsets or submitting source documentation. Claimant stated that it does not have such documentation to support its position, but claims the burden of proof shifted to the state when it filed its original claim in compliance with the SCO's claiming instructions. In other words, the Claimant was asserting error and thus trying to shift to the state the burden. The Commission rejected this reasoning, as did the *Honeywell* court, and found that it is a matter of common sense and public policy to impose the burden of proof upon Claimant.²⁷ Therefore, the Commission found that the SCO does not have the burden of proof to demonstrate the Claimant is ineligible for reimbursement.

Conclusion

The Commission found that the SCO did not incorrectly reduce the Claimant's reimbursement claims on the Graduation Requirements Program based on:

²⁵ *Honeywell v. State Board of Equalization* (1982) 128 Cal.App.3d 739, 744.

²⁶ *Id.*

²⁷ *Id.*

- Government Code sections 17561, subdivision (d), and 17564, subdivision (c) authorizes the SCO to audit claims for legality, correctness and to adjust claims if they are excessive or unreasonable.
- Statutory law does not define the scope or manner in which the SCO must conduct and audit. There is no legal basis in which to conclude the SCO did not perform a proper audit.
- The Commission does not have specific or implied authority to determine whether the SCO created a standard of general application without the benefit of law or due process of rulemaking. The Commission is prohibited from deciding the rulemaking issue raised by Claimants.
- The SCO performed the reductions in accordance with the Claiming Instructions, and the Parameters and Guidelines, because the Claimant did not include offsetting savings and claim salary differentials in its claim, or provide documentation to support its claim for teachers' salaries.
- There is no evidence that the SCO arbitrarily denied payment of teachers' salaries to the Claimant.
- The SCO does not have the burden of proof to demonstrate that Claimant is ineligible for reimbursement.

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